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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/552,565

10/11/2005

Alfred Pellegrini

ITP-127US

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23122 7590 03/30/2010

RATNERPRESTIA

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EXAMINER

PRANGE, SHARON M

ART UNIT

PAPER NUMBER

3728

MAIL DATE

DELIVERY MODE

03/30/2010

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/552,565	<b>Applicant(s)</b> PELLEGRINI, ALFRED	
	<b>Examiner</b> SHARON M. PRANGE	<b>Art Unit</b> 3728	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,9 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9 and 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |                                                                                     |                                                                   |
|-------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                    | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____                                                         | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/12/10 has been entered.

Claims 1, 2, 4-7, 9, and 14-16 remain pending in this application.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1, 2, 4-7, 9, and 14-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 recites the limitation "such that each lace, between two consecutive lacing eyes of the same edge through which it extends, extends through only one lacing eye of the edge" in lines 8-10. This limitation is vague and indefinite, as it is not clear which of the first and second lace are being referred to, and which edges are being referred to. It appears that the limitation is intended to read 'extends through only one lacing eye of the other edge' in line 10. In this case, the claims remain indefinite, because an eye on the opposite edge does not have any structural relationship with the

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eyes on the first edge such that it may be considered to be between the eyes on the first edge. For purposes of examination, the eye on the opposite edge is considered to be between the eyes on the first edge when it is located across from the eyes such that it would be between the eyes if the two edges overlapped.

***Claim Rejections - 35 USC § 102***

4. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

5. Claims 1, 2, 4-7, 9, and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Oh (WO 00/35308).

Oh discloses footwear with a lace fastening having an opening with first and second edges and a plurality of closed-type lacing eyes. Two laces (5a, 5b) extend through the lacing eyes such that between two consecutive lacing eyes of the same edge through which a first lace (5a) extends, there is at least one lacing eye of the same edge through which a second lace extends. Further, depending on the location of each edge with respect to the other, the laces eyes may be located such that between two consecutive eyes through which one lace extends, that lace extends through only one eye of the other edge. The edges are not fixed in position in relation to each other, so one edge may be shifted up or down so that the eyes on either side are in different positions in relation to each other. Each of the laces converge on both edges of the opening in respective and separate grips (fixing parts 2). Each end of the laces extends through a respective end lacing eye of the fastening on the first and second edges.

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Constricting type means (fixing body 6) are provided for locking the laces in the region of the end lacing eyes (page 2, lines 29-31; page 3, lines 2-18; Fig. 3, 4, 7, 8).

***Claim Rejections - 35 USC § 103***

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claims 1 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rathmell (US 3,837,098).

Rathmell discloses footwear with a lace fastening having an opening with first and second edges and a plurality of closed-type lacing eyes. Two laces (tensioning means 6) extend through alternating lacing eyes such that between two consecutive lacing eyes of the same edge through which a first lace extends, there is at least one lacing eye of the same edge through which a second lace extends. Further, between two consecutive lacing eyes on one edge through which the first lace extends, the first lace extends through only one lacing eye on the other edge. Although Rathmell does not specifically disclose the laces converging on the edges of the opening, it would have been obvious to one of ordinary skill in the art at the time of the invention that the ends of the laces would converge in order to maintain the laces in a tightened position, for example by tying the laces together.

### ***Response to Arguments***

8. Applicant's arguments filed 12/8/09 have been fully considered but they are not persuasive. Applicant argues that Oh does not disclose a lacing arrangement in which "between two consecutive lacing eyes of the same edge through which a first of the laces extends there is at least one lacing eye of the same edge through which a second of the laces extends." However, Oh clearly discloses two consecutive lacing eye through which a first lace (5a) extends (for example the first and fourth eyes from the top), and at least one eye (for example the second and third eyes from the top) through which a second lace (5b) extends. There is no requirement in the claims that *every* pair of consecutive eyes have an interceding eye of the other lace. Applicant further argues that in Oh each lace is led through consecutive lacing eyes on the same edge without extending through any lacing eye of the other edge. However, because the two edges are not fixed in position in relation to each other, the eyes may be positioned such that between consecutive lacing eyes on one edge, the same lace extends through only one eye on the other edge. The eyes are not held such that they are exactly across from each, but rather the flexible nature of the upper allows them to move in relation to each other, thus allowing them to be situated as described in the claim.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHARON M. PRANGE whose telephone number is (571)270-5280. The examiner can normally be reached on M-F 7:30-5.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. M. P./ 3/24/10  
Examiner, Art Unit 3728

/Mickey Yu/  
Supervisory Patent Examiner, Art  
Unit 3728